

MARKHAM READ ZERNER LLC

www.markhamreadzerner.com

11A Commercial Wharf West
Boston, Massachusetts 02110
T. (617) 523-6329
F. (617) 742-8604

17 Elk Street, Albany, NY 12207

908 Main Street / P.O. Box 697
Waldoboro, Maine 04572

October 11, 2023

VIA ECF

Honorable Barbara Moses
United States District Court
Southern District of New York
New York, New York 10007

**Re: *Morgan Art Foundation Ltd. v. McKenzie*, 18-cv-04438 (JLR-BCM)
 Opposition to Estate Letter Motion for Writ of Execution**

Dear Judge Moses:

Defendant and Cross Claimant Michael McKenzie (“McKenzie”) objects to the entry of the writ of execution prayed for by Crossclaim-Defendant Nathaniel S. Putnam, Personal Representative of the Estate of Robert Indiana (the “Estate”) in the Estate’s letter motion (at Dkt. No. 526).

The Estate seeks a superfluous writ that puts the burden on the U.S. Marshals of the Southern District to obtain the Robert Indiana artwork from McKenzie’s storage which, under the Arbitration Award confirmed by this Court, is supposed to be arranged by the Estate at its own cost and with the involvement of UOVO, a company specializing in the transport and storage of artwork. *See*, Order Confirming Final Arbitration Award (Dkt. No. 521):

NOW THEREFORE, it is hereby ORDERED as follows:

1. The Estate’s Motion to Confirm Final Arbitration Award (Dkt. No. 507) is GRANTED as to paragraphs 1 through 17 (on pages 46-49) of the Final Award, which portion is attached hereto as Exhibit 1, and such paragraphs shall have the effect of an order of this Court;
2. The Clerk will enter the Final Order and Judgment in this action for Crossclaim- Defendant Nathaniel S. Putnam as Personal Representative of the Estate of Robert Indiana and against Crossclaim-Plaintiffs Michael McKenzie and American Image Art as follows:

* * *

October 11, 2023

Page 2

6. It is ordered that, within thirty (30) days of the date of this Award [July 14, 2023], McKenzie and American Image Art shall release for delivery to UOVO Rockland County - Blauvelt, 100 Bradley Hill Road, Blauvelt, NY 10913 (“UOVO”), all Indiana Artwork subject to the Interim Award with Injunction entered in this arbitration on September 14, 2021. Claimant [the Estate] shall be responsible for one hundred (100) percent of charges incurred in connection with (a) the transfer of the Indiana Artwork to UOVO and (b) all UOVO storage and related charges incurred in accordance with this Award.¹

By agreement between the Estate and McKenzie, the Estate did not arrange for transfer of all the artwork from McKenzie’s storage locations within 30 days of the Award. *See*, attached email correspondence. McKenzie raised the need to modify the Award and Estate counsel did not consider it necessary. *Id.* (Email of McKenzie Counsel on 8/6/2023 and Estate Counsel Response on 8/7/2023: “Under the Final Award, McKenzie is required to release the Inventory on August 13, but it does not require us to pick it up on that date. Therefore, the parties’ agreement to extend the pick-up date to August 25 is sufficient and, in our view, the Final Award does not need to be modified.”) The parties thereafter agreed to rescheduling the August pick-up date referenced.

The Estate and McKenzie first agreed to arranging a site visit to McKenzie’s two storage locations (in Katonah and in Middletown) by the Estate that occurred on September 8, 2023. *Id.* The parties have since been conferring to arrange the dates that UOVO will pack and transport all the Indiana artwork from the two sites. *Id.* The Estate proposed transporting the artwork to a different facility than provided in the Arbitration Award – seeking to switch the UOVO facility from Blauvelt to Brooklyn which involves a longer transport distance. *Id.* Counsel for McKenzie raised that this change would require a modification of the Court’s order confirming the Award and now the Estate has filed a letter request for this modification without opposition by McKenzie. *See*, Dkt. No. 527, Estate Letter.

The Estate did not seek to confer with undersigned before applying for the writ nor does the Estate explain why a writ is needed. They already have an Order from this Court confirming the Arbitration Award that McKenzie must release this artwork, an order which McKenzie did not oppose, and the parties have been engaged in the process of completing the transport to UOVO which is required to be arranged by the Estate. Now, the Estate is seeking a writ to have the U.S. Marshals take the art inventory from McKenzie which is not only unnecessary but a ridiculous burden to place on the Marshals Service.

¹ The Arbitration Award also provided for a monetary award in the sum of \$1,384,607.00 to be paid by McKenzie to the Estate or, alternatively, that the Estate would receive additional Indiana Artwork with an appraised value of \$1,500,000.00 and that the Estate has a lien interest in the Indiana Artwork for this amount. Before the payment deadline, counsel for McKenzie informed Estate counsel that McKenzie opted for the lien method of payment under the Award.

October 11, 2023

Page 3

The Estate request for a writ of execution should be denied.

Respectfully submitted,

/s/ John J.E. Markham, II

John J.E. Markham, II

Attachment (Email Correspondence of Counsel)

cc: Counsel of Record via ECF

Bridget Zerner

From: John Markham
Sent: Monday, October 9, 2023 6:13 PM
To: Seth Brewster; Bridget Zerner
Subject: moving the artwork

Hi Seth:

Please confirm that you will apply for an court order amending the current court order allowing storage of the artwork at the location you proposed, which is outside Rockland County, the county designated in the currently worded order. You may say that we consent to this modification. But we do need this accomplished so that we do not disregard the current wording.

Thanks,

John

John J. E. Markham, II
Markham Read Zerner LLC
11A Commercial Wharf West
Boston, MA 02110
T. 617.523.6329
F. 617.742.8604

908 Main Street
P. O. Box 697
Waldoboro, ME 04572
T. 207.790.8049
www.markhamreadzerner.com

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege.
If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

Bridget Zerner

From: John Markham
Sent: Thursday, October 5, 2023 5:31 PM
To: Seth Brewster; Bridget Zerner
Cc: Alfred Falzone; Elisa McPhee
Subject: RE: Star of Hope - McKenzie - NY Inventory Transfer

Seth –

We also realized that you seem to be transporting the artwork to a Brooklyn facility but the Order provides that the artwork is to be delivered to UOVO Rockland County - Blauvelt, 100 Bradley Hill Road, Blauvelt, NY 10913. If you want to change this, we believe you need to seek to modify the Court order.

John

From: John Markham
Sent: Thursday, October 5, 2023 4:47 PM
To: 'Seth Brewster' <SBrewster@eatonpeabody.com>; Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: RE: Star of Hope - McKenzie - NY Inventory Transfer

Hi Seth:

We will be back to you by Monday, October 9 on the below.

And please provide us the details of the insurance for the artwork inventory upon taking possession.

Thank you,
John

From: Seth Brewster <SBrewster@eatonpeabody.com>
Sent: Monday, October 2, 2023 2:19 PM
To: John Markham <jmarkham@markhamreadzerner.com>; Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: Seth Brewster <SBrewster@eatonpeabody.com>; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: Star of Hope - McKenzie - NY Inventory Transfer

Dear John and Bridget:

I am writing to you about the dates and the process for removing the Inventory from your client's possession and transferring such Inventory to the designated storage location pursuant to the terms of the Arbitration Award. This is for the two New York storage locations. Please get back to me by this Friday, October 6 by 5:00 pm to confirm both the dates and the process. Also, please let me know who will represent Mr. McKenzie on these days for this transfer process.

Scheduled transfer dates

Middletown: 10/30-11/1 - transfer inventory for storage units in Middletown to UOVO facility in Brooklyn
Katonah: 11/6-11/10 – transfer inventory from Katonah barn to UOVO facility in Brooklyn
(11/13 is being held as another tentative date in case it's necessary.)

The Process

Attached is a document that describes the process that will be used to collect and initially inventory the works for transport to UOVO where a final confirming inventory and appraisal will be conducted as described in the AAA Order.

Insurance

Also, please let me know if this Inventory is currently insured and, if so, by whom?

Outdoor Sculpture at Katonah

We are aware that there is a least (1) large outdoor sculpture on the grounds in Katonah that Mr. McKenzie does not want us to transfer. Please identify the sculptures(s) in question by line item on the Inventory and a detailed description, including the estimated current value of the sculpture(s).

I appreciate your help in confirming both the dates and the process of the transfer by Friday, October 6, 2023.

Thank you.

Seth

Seth Brewster

207-274-5268 | Eaton Peabody

Bridget Zerner

From: Bridget Zerner
Sent: Thursday, September 7, 2023 9:50 AM
To: 'Alfred Falzone'; John Markham
Cc: bill@kellylawme.com; Elisa McPhee; Seth Brewster
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

Thanks, Alfred.

Tim Ginexi, the AIA printer.

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
bzerner@markhamreadzerner.com

www.markhamreadzerner.com

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Alfred Falzone <AFalzone@eatonpeabody.com>
Sent: Thursday, September 7, 2023 9:42 AM
To: Bridget Zerner <bzerner@markhamreadzerner.com>; John Markham <jmarkham@markhamreadzerner.com>
Cc: bill@kellylawme.com; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

Bridget,

Of course, Carole Martin is the Star of Hope's Managing Director and Chad MacDermid is responsible for oversight of the foundation's art storage in Maine.

Aside from Mr. McKenzie, would you tell us who else from American Image Art will be present tomorrow?

Best,
Alfred

Alfred J. Falzone III
207-274-5266 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>
Sent: Thursday, September 7, 2023 09:19 AM
To: Alfred Falzone <AFalzone@eatonpeabody.com>; John Markham <jmarkham@markhamreadzerner.com>
Cc: bill@kellylawme.com; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

**** This message was sent from an external sender ****

Okay, can you tell us who from Star of Hope plan to attend?

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
bzerner@markhamreadzerner.com

www.markhamreadzerner.com

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Alfred Falzone <AFalzone@eatonpeabody.com>
Sent: Thursday, September 7, 2023 9:15 AM
To: Bridget Zerner <bzerner@markhamreadzerner.com>; John Markham <jmarkham@markhamreadzerner.com>
Cc: bill@kellylawme.com; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

Bridget,

No worries, and yes, two of those folks will be from UOVO.

I misspoke in my previous email regarding the breakdown: we will have two people from UOVO, two from Star of Hope, and myself.

Best,
Alfred

Alfred J. Falzone III
207-274-5266 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>
Sent: Thursday, September 7, 2023 08:24 AM
To: Alfred Falzone <AFalzone@eatonpeabody.com>; John Markham <jmarkham@markhamreadzerner.com>

Cc: bill@kellylawme.com; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

**** This message was sent from an external sender ****

Morning, Alfred – for some reason your email was sent to quarantine by our system yesterday and I am just receiving it now.

The people from the storage facility you mentioned – do you mean UOVO?

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> url.emailprotection.link)

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Alfred Falzone <AFalzone@eatonpeabody.com>

Sent: Wednesday, September 6, 2023 2:36 PM

To: Bridget Zerner <bzerner@markhamreadzerner.com>; John Markham <jmarkham@markhamreadzerner.com>

Cc: bill@kellylawme.com; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

Bridget,

Thanks for the update. We will have a total of five people, two from our storage facility and two from the art movers, in addition to myself.

Our understanding is that no artwork will be removed from Katonah or Middletown on Friday. As far as physical contact with the pieces, to the extent that it is necessary for the moving and storage team to adequately complete their estimates, I imagine some touching and moving of individual pieces could be required.

Best,
Alfred

Alfred J. Falzone III
207-274-5266 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>

Sent: Wednesday, September 6, 2023 02:28 PM

To: Seth Brewster <SBrewster@eatonpeabody.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

**** This message was sent from an external sender ****

Hi Seth:

Sorry for delay as John and I were jammed up yesterday with a California arbitration dispute.

Mike McKenzie will be at Katonah for your visit on Friday morning and then Mike or another AIA staff member will go on to Middletown.

Can you advise who will be going to the site visit from your side?

Also, as previously discussed, we understand that this a site visit to see the inventory so estimates for shipping and storage can be provided. This is to visually assess the artwork that would need to be relocated under the Final Award and the parties involved on Friday will not be moving or touching the artwork. Please confirm we are all on the same page.

Thanks,
Bridget

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#))

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Seth Brewster <SBrewster@eatonpeabody.com>
Sent: Tuesday, September 5, 2023 8:39 AM
To: Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award - confirming site visit on 9/8

Bridget:

Thank you. I am confirming the site visit for this Friday as follows:

Our crew will arrive this Friday, September 8 for the site visits.
We will arrive at the Katonah site at 9:00AM. I understand that McKenzie will be there to let us in.

Upon completion of review of that location, we'll take the approximately 1-hour drive to the Middletown storage facility. Can you confirm who will be there to let us in?

I appreciate you confirming these details and letting us know who will let us into the Middletown storage facility.

Thank you.

Seth

Seth Brewster

207-274-5268 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>

Sent: Tuesday, August 29, 2023 9:40 AM

To: Seth Brewster <SBrewster@eatonpeabody.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope - site visit on 9/8 and other issues

**** This message was sent from an external sender ****

Seth –

As previously confirmed, we are set for September 8. McKenzie will be there.

McKenzie will not be assigning his storage lease to SOH. You will have to make arrangements to move the artwork pursuant to the Award. And I understand you will need to crate all the artwork to move it.

Thank you.

Bridget A. Zerner

MARKHAM READ ZERNER LLC

11A Commercial Wharf West

Boston, MA 02110

Tel: (617) 523-6329

Fax: (617) 742-8604

bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#))

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Seth Brewster <SBrewster@eatonpeabody.com>

Sent: Friday, August 25, 2023 6:20 PM

To: Bridget Zerner <bzerner@markhamreadzerner.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone

<AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope - site visit on 9/8 and other issues

John/Bridget:

Following up on the below.

Seth Brewster

207-274-5268 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Seth Brewster <SBrewster@eatonpeabody.com>

Sent: Tuesday, August 22, 2023 9:16 AM

To: Bridget Zerner <bzerner@markhamreadzerner.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope - site visit on 9/8 and other issues

John/Bridget:

Can you please confirm the following?

September 8 remains the date that SoH will arrive to visit both sites where art inventory is stored. We expect our team of 3-4 will arrive not later than mid-morning. This trip is only to see the inventory so estimates for shipping and storage can be provided. After this visit, a date will be scheduled to pack and relocate the inventory to the storage facility designated in the Final Award. Who will be onsite to provide unobstructed access to SoH?

Will McKenzie agree to cooperate with letting SoH take over the lease at the Middletown storage facility?

Is the collection insured? If so, by whom?

Please confirm that there are no other works in any other location, especially any galleries, auction houses etc. Either in or out of the US.

Thank you for your help with this matter.

Seth

Seth Brewster

207-274-5268 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>
Sent: Tuesday, August 8, 2023 2:53 PM
To: Seth Brewster <SBrewster@eatonpeabody.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope - site visit

**** This message was sent from an external sender ****

Seth – I can confirm September 8 for a site visit.

Will be back to you to address other matters.

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#)) (-> [url.emailprotection.link](#))

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Seth Brewster <SBrewster@eatonpeabody.com>
Sent: Tuesday, August 8, 2023 2:05 PM
To: Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>
Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope - site visit

Bridget:

I am writing about the site visit, which we had expected and scheduled for Friday, August 11.

Unfortunately, the necessary people required for the site visit are not available on your suggested alternative date (Tuesday, August 15). In fact, these necessary players are not available for the site visit until **September 8, 2023**. Please confirm that date. (In fact, if McKenzie is not available on September 8, we must suggest that he designate a representative to give us access to the Inventory on September 8).

Can you please confirm the following:

1. All the Inventory is located at McKenzie's studio at 171 Golden Bridge Road, Katonah, New York 10536 and six storage units at Safe Haven Self Storage, 360 NY-211, Middletown, NY 10940 (and no other locations)?

2. The Inventory prepared in November 2021 (and attached to this email) is the accurate and complete documentation of the Artwork.
3. As set forth in the Inventory, the Artwork is located in the places designated in the attached Excel spreadsheet.
4. There is no existing Inventory (prepared by anyone) with photos of the Artwork.
5. There is no existing third-party appraisal (prepared by anyone) of the Inventory.

Finally, under the Final Award, the artwork was supposed to be released by August 13. With respect to the Artwork located at Safe Haven Self Storage, 360 NY-211, Middletown, NY, we suggest McKenzie assign the lease to Star of Hope (and turn over all keys and control) as soon as possible. That would make things far less complicated for the Star of Hope. Can you let me know whether McKenzie can assign those leases to Star of Hope?

Thank you.

Seth

Seth Brewster

207-274-5268 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>

Sent: Monday, August 7, 2023 12:13 PM

To: Seth Brewster <SBrewster@eatonpeabody.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope

**** This message was sent from an external sender ****

Seth –

We will file our response to the Panel with McKenzie's additional proposed modification indicating the Estate does not agree.

McKenzie cannot do a site visit this Friday as expected as he has a doctor's appointment requiring him to fast the day before and he will be out on Friday.

McKenzie is available for a site visit to the Katonah and Middletown sites on Tuesday, August 15. Please confirm this works for you.

Thanks,
Bridget

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110

Tel: (617) 523-6329

Fax: (617) 742-8604

bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link)

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: Seth Brewster <SBrewster@eatonpeabody.com>

Sent: Monday, August 7, 2023 11:36 AM

To: Bridget Zerner <bzerner@markhamreadzerner.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>; Seth Brewster <SBrewster@eatonpeabody.com>

Subject: RE: Estate / McKenzie - Arbitration Award and the Star of Hope

Good morning Bridget:

I have had the opportunity to discuss this matter with both Larry Sterrs and Bill Kelly.

On our motion to modify/clarify the Final Award, your proposed change (i.e., that the Estate and McKenzie agree on any subsequent appraiser) is not practicable. Our proposed modification takes the decision out of both our hands, and places it within the scope of the Panel-ordered appraisers. Accordingly, we cannot agree that that proposed change.

1. At this stage, based on John Markham's communication on July 26 stating that "[s]ince we have until 8/13 to arrange a pickup, I would plan for that date – actually 8/11 since 8/13 is a Sunday," we are expecting to do a site visit on this Friday, August 11 so we can evaluate the storage, packing and delivery needs of the Inventory. Can you please confirm that all the Inventory is located at McKenzie's studio at 171 Golden Bridge Road, Katonah, New York 10536 and six storage units at Safe Haven Self Storage, 360 NY-211, Middletown, NY 10940 (and no other locations)?
2. We can agree with you that we will not be able to remove the Inventory until August 25, 2023 (which may be longer depending on our evaluation on August 11). Under the Final Award, McKenzie is required to release the Inventory on August 13, but it does not require us to pick it up on that date. Therefore, the parties' agreement to extend the pick-up date to August 25 is sufficient and, in our view, the Final Award does not need to be modified.
3. Accordingly, it is fair that to report to the Panel that McKenzie agrees to our proposed clarification/modification of the Final Award and that the parties have agreed the Estate will perform a site visit on August 11, but the Inventory will not be picked up by the Estate until August 25.
4. I would expect that Attorney Bill Kelly will reach out to John Markman, and request that McKenzie propose his offer to purchase the entire Inventory from the Star of Hope.

Please get back to me as soon as possible about the site visit on Friday, August 11.

Thanks.

Seth

Seth Brewster

207-274-5268 | Eaton Peabody

This message, and any attachments thereto, is intended only for the designated recipient, and is otherwise confidential as a matter of law. If you are not a designated recipient, you must not review, print, copy, distribute, or retain a copy of this message or any of the attachments. If you received this e-mail by mistake, please notify the sender by return e-mail immediately, and destroy or delete this message. Thank you.

From: Bridget Zerner <bzerner@markhamreadzerner.com>

Sent: Sunday, August 6, 2023 2:45 PM

To: Seth Brewster <SBrewster@eatonpeabody.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>; bill@kellylawme.com; Alfred Falzone <AFalzone@eatonpeabody.com>; Elisa McPhee <EMcPhee@eatonpeabody.com>

Subject: FW: Estate / McKenzie - Arbitration Award and the Star of Hope

**** This message was sent from an external sender ****

Seth –

We are sorry that given John's illness we have needed additional time catching up on all our various case matters including this one.

The below message was sent to Bill Kelly last week as we understood the Star of Hope was the controlling party ultimately on handling the art inventory. In addition to what John described below, it's our understanding that packing, moving, storing, and appraising all the artwork involved here will cost in the vicinity of \$1 million that is an unnecessary cost given an alternative method of dividing the artwork can be reached by agreement or we can negotiate a buyout. We also need to address the money and artwork being held by Rosenbaum.

As to our current deadlines, we propose that we agree to extend the deadline for a site visit and movement of the artwork by just two weeks until August 25. We can put this in our response to your motion to be submitted tomorrow. We have conferred with our client and he agrees with all your proposed clarifications to the award except that he wants to add to your proposed paragraph 7(d) the additional provision that: any subsequent appraiser chosen must be agreed upon by both the Estate and McKenzie.

Can we report to the Panel that not only does McKenzie agree to your proposed clarifications but that the parties also agree to an extension of the artwork deadline by two weeks and the additional modifier on choosing an appraiser (if that even becomes necessary)?

Thanks,
Bridget

Bridget A. Zerner
MARKHAM READ ZERNER LLC
11A Commercial Wharf West
Boston, MA 02110
Tel: (617) 523-6329

Fax: (617) 742-8604

bzerner@markhamreadzerner.com

www.markhamreadzerner.com (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link) (-> url.emailprotection.link)

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege. If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

From: John Markham

Sent: Wednesday, August 2, 2023 1:18 PM

To: bill@kellylawme.com

Subject: Estate / McKenzie - Arbitration Award and the Star of Hope

Bill:

I am writing as I said I would about the arbitration award. I am assuming that as beneficiary, the Star of HOPE is the decision maker rather than the estate. I also assume that Larry Sterrs is still the decision maker for the Star of HOPE. If this is not correct, then this email is not likely to have any effect. I hope it does. For almost five years the lawyers have fought exorbitantly as funded by the estate/Star of HOPE. One would have hoped that the arbitration award would end that so that the Star of HOPE could at last carry out its mission without the ball and chain of ongoing legal expense. However, the award does not end the legal process and expense. This is for one obvious and one not obvious reason.

The obvious reason is that lawyers are going to work with art appraisers to engage in an expensive move of all the artwork from its current, well-protected location to a new location, there to engage in an appraisal of each of thousands of pieces of artwork, all under the watchful and costly eye of attorneys. Mike McKenzie thinks there is no need for this. Why move the artwork since it is quite safe where it is as was found when it was audited by the estate/Morgan about a year ago? It can be appraised there as well as in a new location and certainly the custody of it can be easily transferred at the current warehouse.

Moreover, why appraise each piece? My understanding is that any art piece appraisal has little to do with market value. The value of a piece of artwork is the amount that will be paid for it on the open market. The appraisal is an unnecessary cost. The appraisal is being used as a way to fairly split the artwork between McKenzie and the estate. The estate itself has filed a motion to the arbitration panel seeking to keep the appraisals confidential and to bar their disclosure to any potential buyer. Instead of engaging in this costly process, we propose that each side take turns picking a piece of artwork. The estate can go first, McKenzie goes second, and so on. Clearly that saves money. We note in this regard that the award provides that the estate pays for the transfer, subsequent warehouse costs, and the appraisal costs.

Turning to what is a non-obvious additional problem, the award does not prohibit either side from offering its share of the artwork on the open market. However, two separate entities marketing the same type of artwork will step all over each other in terms of price point and other matters. One side should buy out the other.

Let me know if you would like to discuss any of this. The time is short, but these concepts should be simple to resolve.

At present, Seth Brewster is pressing us on arranging an artwork site visit by August 11 as under the award, arrangements of transfer of the artwork is to be done by that time.

It is important for the Star of HOPE that this artwork issue gets resolved such that the artwork can be subject to a buy out by McKenzie or sales on the open market of the artwork itself. McKenzie is not going to be able to pay the cash award but rather will opt for the lien credit, meaning that either the buyout or a quick placement of this artwork on the market is the way the Star of HOPE will obtain cash.

You may wonder why McKenzie is suggesting these cost saving measures since they are not his costs. Despite the poison in the past, McKenzie is proud of his long-time collaboration with Robert Indiana and genuinely wishes his legacy to be seen as more than a lawyer's cash cow.

John

John J. E. Markham, II
Markham Read Zerner LLC
One Commercial Wharf West
Boston, MA 02110
T. 617.523.6329
F. 617.742.8604

www.markhamreadzerner.com (-> urldefense.proofpoint.com) (-> [url.emailprotection.link](mailto:emailprotection.link)) (-> [url.emailprotection.link](mailto:emailprotection.link)) (-> [url.emailprotection.link](mailto:emailprotection.link)) (-> [url.emailprotection.link](mailto:emailprotection.link)) (-> [url.emailprotection.link](mailto:emailprotection.link))

MARKHAM READ ZERNER LLC is a law office. This document may contain confidential matters or matters protected from disclosure by the attorney-client privilege. Any inadvertent disclosure of the content of this document to any unintended recipient is not intended to be, nor is it, a waiver of this privilege.

If you have received this email in error, please advise us by return email and delete the contents of the email. Thank you.

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.